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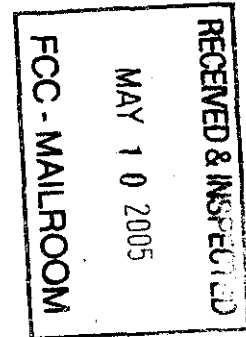


Federal Communications Commission
Washington, D.C. 20554

May 2, 2005

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
Post Office Box 6648
Annapolis, Maryland 21401-0648

DOCKET FILE COPY ORIGINAL



Re: Petition for Rule Making
Whittemore, MI - Channel 267A

Dear Mr. Kelly:

I am writing in response to the petition for rule making, that you filed on behalf of WATZ Radio, Inc. ("WATZ Radio"), requesting the allotment of Channel 267A at Whittemore, Michigan, as that community's first local aural transmission service.

WATZ Radio's petition conflicts with, and was filed after the cut-off deadline for, a counterproposal in MMB Docket 01-229, which proposes the allotment of Channel 267A at Caseville, Michigan. It is our policy not to accept proposals for allotment changes that are in conflict with, or conditioned upon, a cut-off proposal or a non-final decision in another pending proceeding. *See Amboy, Baker, and Desert Center, California; Kingman, Mohave Valley, Parker, and Seligman, Arizona; and Boulder City, Caliente, Henderson, and Pahrump, Nevada*, 19 FCC Rcd 12405, 12408 (MB 2004); *Pinewood, South Carolina*, 5 FCC Rcd 7609 (MMB 1990), *app. for rev. denied*, 15 FCC Rcd 11050 (MMB 2000); *Auburn, Northport, Tuscaloosa, Camp Hill, Garden, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama*, 17 FCC Rcd 16227 (MB 2002); and *Milford, Utah*, 19 FCC Rcd 10335 (MB 2004).

Based on the above, we are returning WATZ Radio's proposal for the allotment of Channel 267A at Whittemore, Michigan. WATZ Radio may resubmit the petition, provided that the petition includes a showing that a fully-spaced transmitter site is available that provides city grade coverage to the entire community.

Sincerely,

John A. Karousos
Assistant Chief
Audio Division
Mass Media Bureau

Enclosure

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

RECEIVED

NOV 7 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)

)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Whittemore, Michigan))

MM Docket No.
RM-

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULEMAKING

WATZ Radio, Inc., pursuant to Sections 1.411 and 1.420 of the Commission's Rules, hereby respectfully submits this Petition for Rulemaking, and respectfully requests that the Commission amend the FM Table of Allotments, 47 CFR §73.202(b), in the following respect:

Community	Present	Proposed
Whittemore, Michigan	--	267A

In so doing, the following is shown:

Statement of Interest

1. Should the Commission grant this Petition, WATZ will file any and all appropriate and necessary applications to receive authority to construct a new FM Broadcast Station

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at Whittemore, Michigan, and WATZ would then construct said new station at Whittemore.

Community Characteristics of Whittemore, Michigan

2. Whittemore is a community located on Michigan Highway M-65 in Iosco County, Michigan. It is listed in the 2000 U. S. Census, with a population of 476. It has its own post office and zip code, 48770.

3. Whittemore is an incorporated city. Whittemore is served by the Whittemore-Prescott School District, which includes an elementary school, junior high school, high school and adult education. Whittemore has 4 churches: St. James Roman Catholic Church; Good News Ministries Lutheran Church; Whittemore Baptist Church; and Whittemore United Methodist Church. Whittemore is served by the Whittemore Branch of the Iosco Arenac District Library. It has a Chamber of Commerce, a Senior Citizens "Drop In Center" and, according to the listings obtained from the CD-Rom **Phone Disc Business Pro, 3rd Edition**¹, over 50 commercial establishments (See Exhibit A).

¹Published by Digital Directory Assistance, Inc. of Bethesda, Maryland in 1996. Since the publication of this directory, the local telephone area code has changed from "517" to "989".

Section 307(b) and Technical Considerations

4. Were this Petition to be granted, Whittemore would receive its first local service, thus fulfilling allotment priority (3) of the Commission's allotment priorities².

5. The allocation of Channel 267A at Whittemore, Michigan conforms with all requirements of the Commission's technical rules, including spacing and city-grade coverage, as is demonstrated in the accompanying technical statement of Messrs. Cohen, Dippell & Everist, P.C., which is appended hereto as Exhibit B.

Effect of Counterproposal in MM Docket No. 01-115

6. In pending MM Docket No. 01-115, Au Gres Broadcasting Company (AGBC) proposed the allocation of Channel 295A at Au Gres, Michigan, which is some 20 highway miles to the south of Whittemore. A "Counterproposal" was filed on July 16, 2001, the last day for comments and counterproposals in Docket 01-115, which sought the upgrade of Channel 257C2 at Frankfort, Michigan, some 132 miles northwest of Au Gres, to Class C1 status, and which proposed a chain of four alterations to the FM Table of Allotments (at Alpena, Beaverton, Cheboygan and Standish, Michigan) and a change in the channel number at Au Gres from Channel 295A

²The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 29 88 (1982).

to Channel 267A. The day for Reply Comments to said "Counterproposal" was set by the Commission at today, November 7, 2001. WATZ has, simultaneously with the filing of this "Petition for Rulemaking", filed Reply Comments which demonstrate that, *inter alia*, said "Counterproposal" violates Section 1.420(d) of the Commission's Rules, in that the proposed allocation of Channel 257C1 at Frankfort is not in and of itself in conflict with the allocation of Channel 295A at Au Gres (a counterproposal must propose something that is "in conflict" with an existing allocation, not "contingent" upon the change of said allocation).

7. Should WATZ's position in MM Docket No. 01-115 be sustained, as legally and logically it must be, Channel 267A would be available for allocation to Whittemore.

Conclusion

8. Whittemore is an independent community that is entitled to its own local aural broadcast station. The allocation of Channel 267A at Whittemore is consistent with Section 307(b) of the Communications Act, as amended, and with the FM frequency allocation policies of the Commission.

WHEREFORE, WATZ Radio, Inc. urges that this Petition for Rulemaking **BE GRANTED** and that Channel 267A **BE ALLOCATED** to Whittemore, Michigan.

Respectfully submitted,

WATZ RADIO, INC.

By



Dennis J. Kelly
(D. C. Bar #292631)
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 6648
Annapolis, MD 21401-0648
Telephone: 888-322-5291

November 7, 2001

EXHIBIT A

B JS WHITE MORE HOTEL 316 S BULLOCK WHITTEMORE, MI 48770 517-756-2542
 BELLVILLE ELECTRIC WHITTEMORE, MI 48770-9798 517-756-4431
 BIG BOYS TOY STORE 6227 PLANT RD WHITTEMORE, MI 48770-9709 517-756-3371
 BOWLSBY OIL CO INC 206 W 2ND WHITTEMORE, MI 48770 517-756-2231
 BROUGHTON CONSTRUCTION COMPANY 3198 NILE RD WHITTEMORE, MI 48770-9790 517-873-5183
 CARAVAN RADIATOR 117 E STATE ST WHITTEMORE, MI 48770 517-756-4621
 CARTIER JIG GRINDING SERVICE WHITTEMORE, MI 48770-9425 517-756-5516
 CHRIS STONE BUILDER 8131 ALABASTER RD WHITTEMORE, MI 48770-9402 517-756-3262
 CIRCLE A SADDLERY WHITTEMORE, MI 48770 517-756-3003
 DAMRONS PIZZERIA 300 S BULLOCK WHITTEMORE, MI 48770 517-756-2738
 DANIALS FARM 8290 PRESCOTT RD WHITTEMORE, MI 48770-9433 517-756-4935
 FARM & PET VETERINARY SERVICES WHITTEMORE, MI 48770-9207 517-756-5111
 FARRANDS WHITTEMORE FEED 116 WASHINGTON WHITTEMORE, MI 48770 517-756-3510
 FELSKA HEATING 211 E SHERMAN ST WHITTEMORE, MI 48770-9726 517-756-2252
 GAWNE OIL CO INC 206 W 2ND WHITTEMORE, MI 48770 517-756-2231
 GEORGE WORDEN SAND & GRAVEL 6753 WHITTEMORE RD WHITTEMORE, MI 48770-9769 517-756-3661
 GOOD NEWS MINISTRIES LUTH 3107M 65 WHITTEMORE, MI 48770 517-756-2159
 GRAHAM OIL CO 511 BULLOCK WHITTEMORE, MI 48770 517-756-2211
 HUNT BROTHERS POURED WALLS INC 5826M 55 WHITTEMORE, MI 48770-9743 517-362-2457
 IOSCO ARENAC DISTRICT LIBRARY M65 WHITTEMORE WHITTEMORE, MI 48770 517-756-3186
 J & K FUR EXCHANGE WHITTEMORE, MI 48770-9799 517-756-2473
 JANS CRAFT SUPPLY 311 S BULLOCK WHITTEMORE, MI 48770 517-756-4112
 JIMS TAXIDERM 2273M 65 WHITTEMORE, MI 48770 517-756-4331
 JOANIES PLACE 2092 WILSON CREEK RD WHITTEMORE, MI 48770-9766 517-756-4924
 JOHNSON CONSTRUCTION 2467 S TOWERLINE RD WHITTEMORE, MI 48770-9708 517-756-2085
 KEYSTONE BOOKKEEPING & TAX SVC 7520 KEYSTONE RD WHITTEMORE, MI 48770-9791 517-873-4556
 KS KOUNTRY KURL 215 4TH ST WHITTEMORE, MI 48770-9414 517-756-2568
 L & L AWNING & WINDOW 3381 ALLEN WHITTEMORE, MI 48770 517-756-2181
 LANGDONS WHITTETAIL CONEY ISLE WHITTEMORE, MI 48770-9718 517-756-4400
 LAURIAS HDWR PLBG & L P GAS 220 BULLOCK WHITTEMORE, MI 48770 517-756-4541
 M 65 & M 55 BAIT SHOP WHITTEMORE, MI 48770-9425 517-756-3651
 MACKINAW LAND & CATTLE CO 8805 MEADOW RD WHITTEMORE, MI 48770-9755 517-756-2783
 MICHIGAN CONSOLIDATED GAS WHITTEMORE, MI 48770 517-756-2450
 MODULAR MACHINE INC WHITTEMORE, MI 48770-9423 517-756-3392
 NEARS INC 425 N BULLOCK WHITTEMORE, MI 48770 517-756-2203
 NORTH BANK 205 N BULLOCK WHITTEMORE, MI 48770 517-756-2401
 PRECISION GRINDING SVC INC WHITTEMORE, MI 48770-9423 517-756-5516
 PRESCOTT UNTD METHDST CHRCH 406 4TH ST WHITTEMORE, MI 48770-9414 517-756-2831
 QUALITY HOME HEALTH CARE 197 COX RD WHITTEMORE, MI 48770-9409 517-362-4711
 SAINT JAMES CATHOLIC CHURCH 202 E SHERMAN ST WHITTEMORE, MI 48770-9726 517-756-2591
 SENIOR CITIZENS DROP IN CENTER 203 E SHERMAN ST WHITTEMORE, MI 48770-9726 517-756-2792
 SENSATIONAL SOUNDS 316 SW 3RD WHITTEMORE, MI 48770 517-756-3571
 SHERNIS CANDIES WHITTEMORE, MI 48770-9425 517-756-3691
 SIEGRIST GUN & MACHINE SHOP 8752 TURTLE RD WHITTEMORE, MI 48770-9447 517-873-3929
 SKIPS CAR CORRAL 100 S BULLOCK WHITTEMORE, MI 48770 517-756-5041
 SPENCER AUTO PARTS WHITTEMORE, MI 48770-9799 517-756-2147
 SPORTMANS RESTAURANT & LOUNGE 200 S BULLOCK WHITTEMORE, MI 48770 517-756-4169
 STONEY ACRES COLLISION 7227 PRESCOTT RD WHITTEMORE, MI 48770-9770 517-756-3561
 TAWAS BAY AGENCY INC INS 214 BULLOCK WHITTEMORE, MI 48770 517-756-2901
 THOMPSONS GARAGE 6868 WHITTEMORE RD WHITTEMORE, MI 48770-9769 517-756-4185
 TRI TECH TRANSMISSIONS 6872 ALABASTER RD WHITTEMORE, MI 48770-9733 517-756-3206
 VIDEO WORLD 311 N BULLOCK RD WHITTEMORE, MI 48770 517-756-4088
 WHITTEMORE AUTO REPAIR WHITTEMORE, MI 48770-9711 517-756-4321
 WHITTEMORE BAPTIST CHURCH 210 N BULLOCK WHITTEMORE, MI 48770 517-756-3382
 WHITTEMORE CHAMBER OF COMMERCE 405 E SHERMAN ST WHITTEMORE, MI 48770-9726 517-756-5231
 WHITTEMORE CITY OF CITY HALL 503 S BULLOCK WHITTEMORE, MI 48770 517-756-3011
 WHITTEMORE FEED & GRAIN 116 WASHINGTON WHITTEMORE, MI 48770 517-756-3510
 WHITTEMORE PARTY & DEPT STORE 302 BULLOCK WHITTEMORE, MI 48770 517-756-2271
 WHITTEMORE SPEED WAY WHITTEMORE, MI 48770 517-756-2280
 WHITTEMORE SQUARE APARTMENTS 390 E SHERMAN ST WHITTEMORE, MI 48770-9744 517-756-3106
 WHITTEMORE UNTD METHDST CHRCH 406 4TH ST WHITTEMORE, MI 48770-9414 517-756-2831
 WOOD CONSTRUCTION 115 N BULLOCK WHITTEMORE, MI 48770 517-756-4206
 YOUNGBERGS FARM PRODUCE WHITTEMORE, MI 48770-9798 517-756-2472

EXHIBIT B

ENGINEERING STATEMENT
RE PETITION FOR RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS (47 CFR 73.202)
TO ADD NEW FM CHANNEL
WHITTEMORE, MICHIGAN

NOVEMBER 2001

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

COHEN, DIPPELL AND EVERIST, P.C.

WATZ RADIO, INC.

PAGE 1

This engineering statement has been prepared on behalf of WATZ Radio, Inc. (WATZ), licensee of FM radio station WATZ, Alpena, Michigan, and is in support of its proposal to allot FM Channel 267A(101.3 MHz) to Whittemore, Michigan. This proposal is filed with reference to the Commission's Notice of Proposed Rule Making (RM-10325 and RM-10129) in MM Docket No. 01-115. In this Docket, the Commission is considering a request to amend the Table of Allotments which proposes to allot Channel 295A at Au Gres, Michigan, as the community's first local aural transmission (RM-10129) service.

As part of the same Docket, the Commission has also under consideration a counter-proposal (RM-10325) requesting an amendment of the FM Table of Allotments to substitute Channel 249C2 for the current Channel 257C2 at Alpena, Michigan, substitute Channel 246A for Channel 249A at Beaverton, Michigan, substitute Channel 257C1 for Channel 257C2 at Frankfort, Michigan, substitute Channel 271C3 for Channel 249C3 at Cheboygan, Michigan, and delete Channel 245A and substitute Channel 295A at Standish, Michigan.

Since the proposed reference site for Channel 295A at Standish is located only 21.5 km from the allotment site of Channel 295A at Au Gres, Michigan, both channels cannot be allotted to their respective communities according to the Commission's Rules. Therefore, the counter-proposal outlined in RM-10325 requires another substitution by which the Au Gres proposed Channel 295A would be changed to Channel 267A.

WATZ proposes to offer a solution whereby two communities would receive a first local aural service in lieu of requiring five substitutions of existing stations or allotments and one station relocation to upgrade the facilities of the Frankford, Michigan station.

COHEN, DIPPELL AND EVERIST, P.C.

WATZ RADIO, INC.

PAGE 2

The following amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules is proposed.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Whittemore, MI	—	267A
Au Gres, MI	—	295A

The community of Whittemore is located in the southern part of Iosco County, Michigan. The 2000 U.S. census population for the city of Whittemore and Iosco County is 476 and 27,339 people, respectively. At present, there is no other AM, FM, or TV station licensed to Whittemore, Michigan. The proposed allotment of Channel 267A would enable the community of Whittemore its first local transmission service.

An engineering study indicates there is a large fully-spaced area, east-southeast (approximately 8 kilometers) of Whittemore where an antenna site for Channel 267A can be located to meet the Commission's minimum distance requirements specified in Section 73.207 of the Rules.

The attached Exhibit E-1 shows the minimum distance arcs from the pertinent FM stations and the fully-spaced area with regard to the proposed allotment of Channel 267A to Whittemore, Michigan. A reference site has been selected within the fully-spaced area from where City Grade coverage can be provided to serve all of Whittemore, Michigan, based on the maximum Class A facilities. The geographic coordinates of the proposed Channel 267A reference site are as follows:

North Latitude: 44° 12' 00"

West Longitude: 83° 42' 00"

COHEN, DIPPELL AND EVERIST, P.C.

WATZ RADIO, INC.

PAGE 3

The attached Table I shows the actual and required distances from the reference site to pertinent FM stations. Table I indicates the reference site meets the minimum required distances to all FM stations according to Section 73.207 of the Commission's Rules.

The attached Exhibit E-2 indicates a City Grade signal can be provided to all of Whittemore, Michigan, from the reference site with a 16 km uniform coverage area which is based on 6 kW effective radiated power and 100 meters antenna height above average terrain.

The public interest will be served by the allotment of Channel 267A to Whittemore, Michigan. Additionally, the public interest is served by the allotment of an FM channel to two communities (Whittemore and Au Gres) which would be receiving their first local service. Once assigned, WTCM will participate in the auction process and apply for a construction permit by filing an FCC construction permit application if awarded the allotment. WATZ will construct the new station upon grant of the permit.

COHEN, DIPPELL AND EVERIST, P.C.

TABLE I
FM ALLOCATION SITUATION
FOR THE PROPOSED ALLOTMENT OF
CHANNEL 267A FOR WHITEMORE, MICHIGAN
NOVEMBER 2001

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates NAD-27</u>	<u>Separation</u>	
				<u>Actual</u>	<u>Required</u>
267A	Ref. Site	Whittemore, MI	44°12'00" 83°42'00"	—	—
264C3	WCLS-FM	Oscoda, MI	44°34'42" 83°22'40"	49.3	42
265C	None within 200 km			—	165
265A	None within 50 km			—	31
266A	WQON	Roscommon, MI	44°34'15" 84°41'33"	89.2	72
267B	WBFX-FM	Grand Rapids, MI	43°02'28" 85°21'28"	185.7	178
268C2	WMJZ-FM	Gaylord, MI	45°01'10" 84°24'28"	107	106
269A	None within 75 km			—	31
269C	None within 150 km			—	95
270C	None within 150 km			—	95
213C	None within 45 km			—	29
214C	None within 45 km			—	29

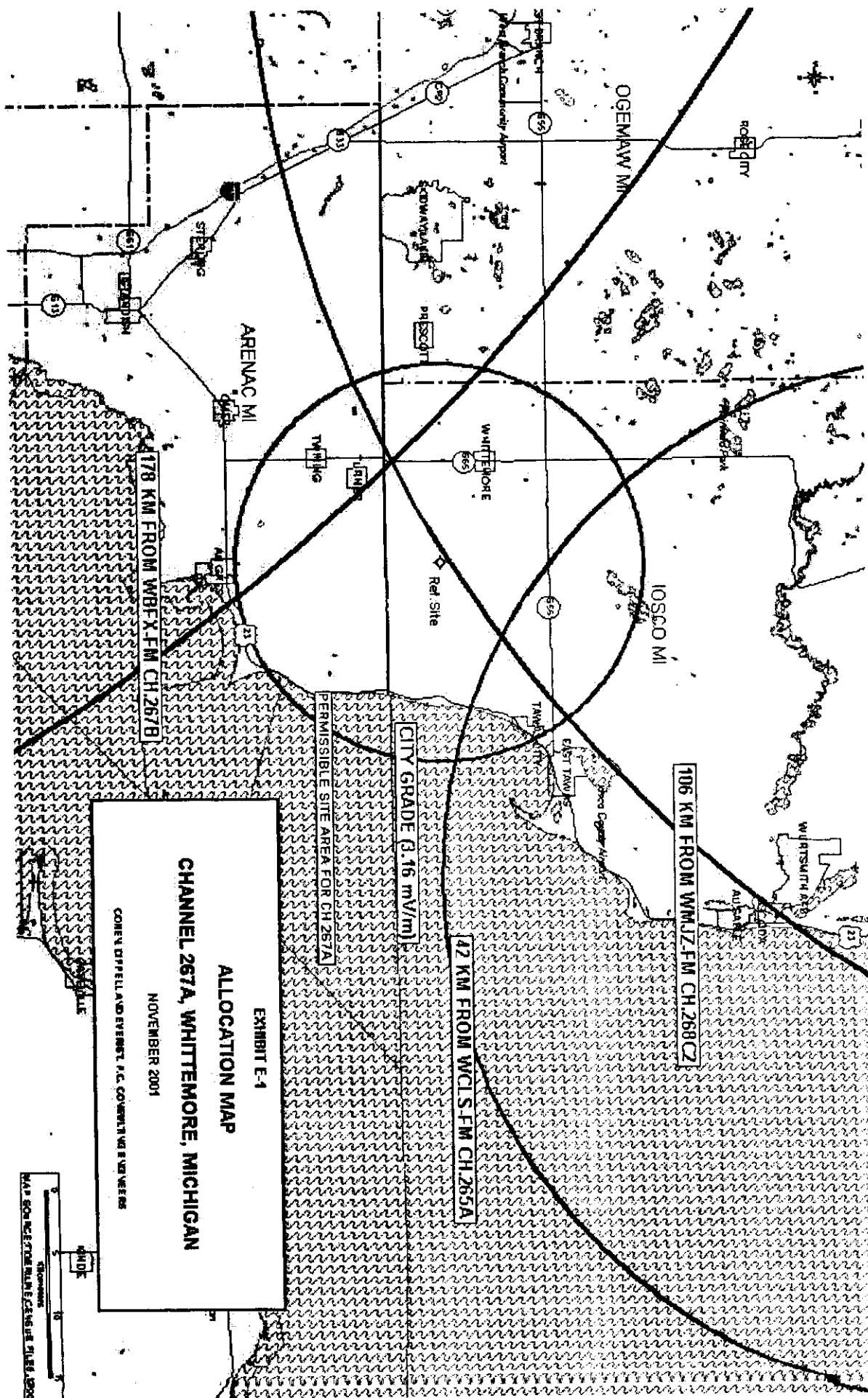


EXHIBIT E-1
ALLOCATION MAP
CHANNEL 267A, WHITTEMORE, MICHIGAN
NOVEMBER 2001
CONLEY DIFFELL AND EVERETT, P.C. CO-OWNERS



CERTIFICATE OF SERVICE

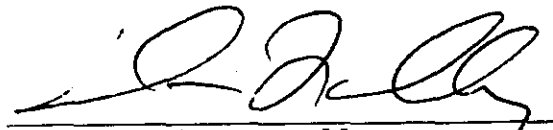
It is hereby certified that a true copy of the foregoing "Petition for Rulemaking" were served by first-class United States mail, postage prepaid, on this 7th day of November, 2001 upon the following:

Arthur V. Belendiuk, Esquire
Smithwick & Belendiuk, P.C.
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Shook, Hardy & Bacon
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Station WMRX-FM
Steel Broadcasting, Inc.
1510 Bayliss Street
Midland, MI 48640


Dennis J. Kelly